

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KARL LYNN MCGEE, §
Plaintiff, §
v. § Case No. 6:23-cv-133-JDK-KNM
BEVERLY MELONTREE, et al., §
Defendants. §

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Karl Lynn McGee, proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983 in the Northern District of Texas. After the Northern District transferred the case here, it was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On May 24, 2023, the Court ordered Plaintiff to pay the required filing fee or apply to proceed *in forma pauperis* within five business days to proceed with this suit. Docket No. 6. Instead of complying with the Court's order, plaintiff moved to amend the deficiency order, asking the Court to waive the filing fee. Docket No. 8. Liberally construing this filing as a motion for extension of time, the Court granted the motion and allowed Plaintiff an additional five business days to pay the full filing fee or file a completed application to proceed *in forma pauperis*. Docket No. 9. Despite the extension, Plaintiff submitted an incomplete *in forma pauperis* application and failed to follow its included instructions. Docket No. 13. Based on these repeated failures

to comply, the magistrate judge denied Plaintiff's motion to proceed *in forma pauperis* and recommended that the Court dismiss Plaintiff's complaint without prejudice for failure to prosecute. Docket No. 15. Plaintiff filed objections. Docket No. 16.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), superseded on other grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

A district court may dismiss an action for a litigant's failure to prosecute or to comply with any order of the court. Fed. R. Civ. P. 41(b); *see also McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) ("The court possesses the inherent authority to dismiss the action *sua sponte*, without motion by a defendant."). Plaintiff was directed multiple times to pay the full filing fee or submit a complete application to proceed *in forma pauperis*. Docket Nos. 6, 9. Despite multiple opportunities, Plaintiff has failed to comply. Indeed, even Plaintiff's objections are another incomplete application to proceed *in forma pauperis*. Docket No. 16.

Because Plaintiff has repeatedly failed to comply with the Court's order, dismissal under Federal Rule of Civil Procedure 41(b) is appropriate.

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the

Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 15) as the opinion of the District Court. Plaintiff's claims are **DISMISSED** without prejudice for failure to prosecute.

Signed this
18th day of July, 2023



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE